Supreme Court, U.S.
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No. 80-1014

In the Supreme Court of the United States

OCTOBER TERM, 1980

CARROLL FEED SERVICE, INC.,

Appellant,

vs.

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE AND HIS AGENTS,

Appellee.

On Appeal From the Supreme Court of Illinois

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether Section 3 of the Illinois Grain Dealers Act (Ill.Rev.Stat., Ch. 111, Sec. 303) which states that a grain dealer must post a bond in order to operate in the amount of ten percent of the sales of said grain dealer but not less than twenty-five thousand dollars nor more than one hundred thousand dollars is unconstitutional on its face in that said statute deprives appellant of the right of equal protection of the 14th Amendment of the Constitution of the United States.

2. Whether Section 6 of the Illinois Grain Dealers Act (Ill.Rev.Stats. Ch. 111, Sec. 306) which states that:

> "The director is authorized to serve subpoenas duces tecum on any or all records relating to a grain dealer's business . . ."

is unconstitutional in that said vague language constitutes a search warrant and is therefore violative of appellant's right to be free from unreasonable search and seizure as required by the 4th Amendment to the Constitution of the United States.

3. Whether the summary granting of appellee's petition for injunctive relief pursuant to Sec. 8 of the Illinois Grain Dealers Act (Ill.Rev.Stat., Ch. 111, Sec. 309) without a factual hearing as to general equitable principles such as a showing of irreparable harm and the absence of an adequate remedy at law deprived appellant of the property without due process of law, contrary to the 4th Amendment of the Constitution of the United States.

Footnote: The caption of the case contains the names of all the parties.

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OPINIONS BELOW

The opinion of the Appellate Court of Illinois, Second District (Appendix B, infra, pp. App. 18 to App. 22) is reported at App. 38 Ill.Dec. 531, 403 N.E. 2d 762 (2nd Dist. 1980). The opinion of the Illinois Supreme Court denying appellant's petition for appeal as a matter of right is not reported (App. C, infra, p. App. 23).

JURISDICTION

This is a proceeding brought by appellant challenging the deprivation of its grain dealer's license and thus the right to do business on the grounds that the bonding provision (Sec. 3) (Ill.Rev.Stat., Ch. 111, Sec. 303), the subpoena provision (Sec. 6) (Ill.Rev.Stat., Ch. 111, Sec. 306), and the injunction provision (Sec. 8) (Ill.Rev.Stat., Ch. 111, Sec. 309) of the Illinois Grain Dealers Act are unconstitutional. The judgment of the Appellate Court of Illinois, Second District (App. B, infra, pp. App. 18-App. 22), upholding the constitutionality of the Illinois Grain Dealers Act was entered on April 15, 1980. The Illinois Supreme Court denied appellant's appeal as of right on September 29, 1980 (App. C, p. App. 23). The notice of appeal (App. E, p. App. 26) was filed on October 30, 1980, with the Clerk of the Illinois Appellate Court, Second District, which is possessed of the record. On November 6, 1980, the notice of appeal was filed with the Clerk of the Supreme Court of Illinois (App. E, p. 27). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (1).

STATUTES INVOLVED

The Illinois Grain Dealers Act provides as follows:

Ill.Rev.Stat., Ch. 111, Sec. 303: See App. A, pp. App. 4-App. 8.

Ill.Rev.Stat., Ch. 111, Sec. 306: See App. A, pp. App. 9-App. 12.

Ill.Rev.Stat., Ch. 111, Sec. 309: See App. A, pp. App. 13-App. 14.

STATEMENT

Appellee filed a complaint for injunction (App. F, pp. App. 28-App. 32) enjoining the appellant from continuing to operate a grain dealership because appellant had not filed a bond, as required by Sec. 3 of the Illinois Grain Dealers Act (Ill.Rev.Stat., Ch. 111, Sec. 303) (App. A, pp. App. 1-App. 17) Appellant filed a motion to dismiss (App. G, pp. App. 33-App. 34) said complaint alleging that said Sec. 3 bonding provision is unconstitutional as being violative of the Fourteenth Amendment of the Constitution of the United States.

In addition, appellee further sought to implement the Illinois Grain Dealers Act by using its subpoena powers delegated through Sec. 6 of the Illinois Grain Dealers Act (Ill.Rev.Stat., Ch. 111, Sec. 306, App. F, pp. App. 28-App. 32). Appellee attempted to use this statute to seize appellant's records at the time of inspection rather than to require production at a court appearance. Appellant resisted said subpoena in its motion to dismiss appellee's complaint for injunction, stating that said Sec. 6 is unconstitutional as violative of the Fourth Amendment of the Constitution of the United States (App. G, pp. App. 33-App. 34). The appellee also received a summary injunction without any hearing as to irreparable harm or adequate remedy at law. The appellant made an offer of proof which was denied.

After a hearing, the Circuit Court of Carroll County, Illinois, entered an injunctive order finding, among other things, that said Illinois Grain Dealers Act was constitutional (App. D, pp. App. 24-App. 25). From this order, the appellant appealed to the Appellate Court of Illinois, Second District. The questions presented on appeal to that court were the same as those raised in the pleadings (App.

F, pp. App. 28-App. 32). These questions were raised by the brief and argument of the appellant, which is the proper method of doing so.

The Appellate Court of Illinois, Second District, specifically decided against appellant on all of the issues now presented to this Court on appeal, stating (App. A, pp. App. 1-App. 17), "However, we conclude that the bonding provision of the Act . . . is constitutional." The Appellate Court of Illinois did not reach the merits of the arguments as to the constitutionality of Sec. 6 of the Illinois Grain Dealers Act. Said appellate court also held that there be a showing of irreparable harm or the absence of an adequate remedy at law.

In rejecting the appellant's contentions, the Appellate Court of Illinois, Second District, applied and enforced to the appellant's disadvantage a state statute which the appellant had, in its answer and at all subsequent stages, insisted was, if so applied and enforced, repugnant to the Fourteenth and Fourth Amendments of the Constitution of the United States.

The appellant appealed the decision of the Illinois Appellate Court, Second District, to the Illinois Supreme Court by way of a petition for appeal as a matter of right. The Illinois Supreme Court, by similarly rejecting the appellant's petition for appeal as a matter of right, did also subject appellant to a state statute repugnant to the Fourth and Fourteenth Amendments.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

1. The question presented on this appeal has never been passed on by this Court. With the plight of the small businessman in grave danger, with the advent of more governmental control than ever and the desire of the people of this country to eliminate that bureaucratic bondage in order to once again pursue the American dream of free enterprise in a free market, this question is of great public importance, particularly to small businesses attempting to compete with large corporations.

Sec. 3 of the Illinois Grain Dealers Act, i.e. the bonding provision, does not provide protection for the grain producer. Instead, said bonding provision economically stifles the efforts of small grain dealers while at the same time subjects the grain producer who deposits his grain at a large grain dealer to great financial loss.

For example: That statute states that a grain dealer must post a bond in the amount of ten percent of the sales of said grain dealer but not less than twenty-five thousand dollars nor more than one hundred thousand dollars. Therefore, a grain dealer who generates ten million dollars in gross receipts has only to post a one hundred thousand dollar bond. This would mean one cent on the dollar as protection for the grain producer. A grain dealer who generates one million dollars in receipts would have to post a one hundred thousand dollar bond. This would mean ten cents on the dollar as protection for the grain producer. The statute is clearly and palpably a protection for the large grain dealer and a burden for the small grain dealer, while not affording the protection intended for the grain producer if the grain dealer should abscond with the grain or file bankruptcy. Appellant contends this stat-

ute is repugnant to the 14th Amendment of the Constitution of the United States.

The Illinois Appellate Court, Second District, stated that the bonding provision is not an arbitrary classification, but one which bears a rational relationship to a legitimate legislative purpose. According to the appellate court, a clarification is not arbitrary if any state of facts can reasonably be conceived that would sustain it; that it is, therefore, reasonable for the Illinois legislature to have decided that bankruptcies among small grain dealers are much more likely than among large grain dealers. Such logic is not reasonable. Further, the legislative history of the Illinois Grain Dealers Act contains no reference to special problems or the necessity of protection regarding small grain dealers. One need only view the operations of such large businesses as Chrysler, the Penn-Central Railroad, New York City, the Chicago School Board, the City of Cleveland, and the Milwaukee Railroad to conclude that "bigger" is not always fiscally more secure.

It is submitted by appellant that more protection would be afforded the grain producer if, instead of the Section 3 bonding provision, the State of Illinois took into account such elements as profit and loss statements, managerial abilities, experience, reputation in the local business community, and a full accounting process.

In *Cotting* v. *Goddard,* 183 U.S. 79, (1901) this Court examined a statute similar to the Illinois bonding provision. The licensing provision in *Cotting* was based strictly on the volume of business done by the stock yard. This Court held that such legislation is a classification that bore no rational relationship to any legitimate state purpose.

The question of the validity of a Section 3 bonding provision has never been decided by this Court, and only comparatively in *Cotting.* The appellant contends that the

ruling in *Cotting* should be applied to the Section 303 bonding provision, finding that it is unconstitutional.

2. The appellate court did not reach the merits of the claim that Section 6 of the Illinois Grain Dealers Act (Ill. Rev.Stat. 1977, Ch. 111, Par. 306) is unconstitutional. Appellant submits that the constitutionality of Section 6 of the Illinois Grain Dealers Act should have been addressed by the appellate court in that this is a matter of great public importance. *People ex rel. Baylor* v. *Bell Mutual Cas. Co.,* 54 Ill. 2d 433, 298 N.E. 2d 167 (1973).

The subpoena duces tecum in question (App. H, p. App. 35) requested that appellant turn over all of his records to the Department. This subpoena did not even allow the appellant to bring the documents to a hearing where the validity of such seizure could be addressed. This was clearly not a subpoena duces tecum but a search warrant and is in violation of the 4th Amendment of the Constitution of the United States. Such unrestrained ability to physically remove records from a business premises is clearly a violation of appellant's constitutional right to be free from unreasonable search and seizure. This Court could further clarify *Marshall* v. *Barlow's, Inc.,* 436 U.S. 306 (1978) as said case applies to Sec. 6 of the Illinois Grain Dealers Act and the area of administrative subpoenaes. It is respectfully noted that there is no statutory or common law body of law which supplies any guidance to the area of administrative subpoenaes. Therefore, an administrative subpoena can be either used or abused. Such possibility or probability of abuse is certainly not in the public's interest. Therefore, this is an issue of great public importance, as stated previously.

It is further submitted that Sec. 6, the subpoena statute, is too vague as to subpoenaes duces tecum. It is devoid of guidelines in order to prevent administrative abuse.

3. By denying the defendant a hearing as to the equitable defense of unclean hands and by not requiring the appellee to prove irreparable harm and the absence of an adequate remedy at law, the defendant was denied due process of law. Sec. 8 of the Illinois Grain Dealers Act (Ill.Rev.Stat., Ch. 111, Sec. 309) is the statute authorizing appellee to seek an injunction against the appellant. However, Sec. 8 is void of any guiding language as to implementation of an injunction. Such a void makes Sec. 8 unconstitutional by denying appellant due process of law as required by the 14th Amendment of the Constitution of the United States.

CONCLUSION

The questions presented by this appeal are substantial and of public importance. It is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

APPENDIX A

CHAPTER 111—PROFESSIONS AND OCCUPATIONS

GRAIN DEALERS

AN ACT to license and regulate grain dealers engaged in the business of purchasing grain from the producers thereof and making an appropriation in connection therewith. Laws 1967, p. 3280, approved and eff. Aug. 21, 1967.

301. Definitions

§ 1. When used in this Act, unless the context otherwise requires, the term:

"Person" means any person, firm, association or corporation.

"Incidental grain dealer" means any grain dealer who purchases grain from producers only in connection with or as an incident to a feed milling operation and whose total purchases of grain during any fiscal year do not exceed $100,000.

"Grain" means corn, wheat, oats, rye, soybeans, barley and grain sorghums.

"Grain dealer" means any person engaged in the business of buying grain from producers thereof for resale or for milling or processing. A producer of grain buying grain for his own use as seed or feed shall not be considered as being engaged in the business of buying grain for resale or for milling or processing.

"Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon.

"Department" means the Department of Agriculture of the State of Illinois.

"Director" means the Director of the Department of Agriculture.

Amended by P.A. 81—190, § 1, eff. Aug. 14, 1979.

302. License—Necessity—Application

§ 2. No person shall engage in business as a grain dealer in the State of Illinois without a license therefor issued by the Department. Application for a license to engage in business as a grain dealer shall be filed with the Department and shall be in a form prescribed by the Department. Such application shall set forth the name of the applicant, the principal officers if the applicant is a corporation or the active members of a partnership if the applicant is a partnership, the location of the principal office or place of business of the applicant and the location or locations in this State at which applicant proposes to engage in business as a grain buyer, the fiscal year upon which the grain dealer is or will be operated, the kind of grain which the applicant proposes to buy and handle, the type of business which the applicant proposes to conduct and such additional information as the Department by regulation may require. Any person purchasing agricultural seed from producers as set forth in the "Illinois Seed Law"[1] shall be exempted from being licensed as a grain dealer. However, any seed dealer who purchases grain from producers for the purpose of resale as grain shall be licensed as a grain dealer.

The application for an initial license may be filed at any time prior to beginning business as a grain dealer. However, such license shall terminate 90 days after the close of the grain dealer's fiscal year.

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[1] Chapter 5, ¶ 401 et seq.

The application for renewal of a license, shall be filed with the Department annually within 90 days after the close of the grain dealer's last completed fiscal year or within such further time, not exceeding 60 days, as the Department, upon application, may allow.

For all grain dealers other than incidental grain dealers the application shall be accompanied by a financial statement setting forth financial position and results in operations for the most recent fiscal period of the applicant, prepared in conformity with generally accepted accounting principles and having attached the opinion of an independent public accountant licensed under Illinois law or an entity permitted to engage in the practice of public accounting under Section 15 of "An Act to regulate the practice of public accounting and to repeal certain acts therein named", approved July 22, 1943, as amended,[2] pursuant to an examination conducted in accordance with generally accepted auditing standards. The financial statement shall consist of a balance sheet, statement of income, statement of retained earnings, statement of changes in

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[2] Paragraph 5516 of this chapter.

P.A. 81-186 added the fourth sentence of the first paragraph, relating to purchases of agricultural seed.

P.A. 81-190, at the beginning of the fourth paragraph changed "Effective January 1, 1979" to "For all grain dealers other than incidental grain dealers" and added the fifth and sixth paragraphs relating to incidental grain dealers and financial statements, respectively.

Final legislative action, 81st General Assembly:

P.A. 81-186—____, 1979

P.A. 81-190—____, 1979

See Ill.Rev.Stat. ch. 1, ¶ 1105 as to the effect of (1) more than one amendment of a section at the same session of the General Assembly or (2) two or more acts relating to the same subject matter enacted by the same General Assembly.

financial position, and notes to financial statements, and must be received by the Department within five months of the financial statement date.

For incidental grain dealers the application shall be accompanied by a current financial statement which shall have been prepared or certified by an accountant who is not directly associated with the grain dealer's business. The financial statement shall set forth the assets and liabilities and the net worth of the applicant and such other information with respect to the financial resources of the applicant and the applicant's abilities to pay producers for grain purchased from them as the Department may require.

If the financial statement accompanying the application is not prepared and certified by a licensed public accountant, it shall have the attestation of the grain dealer.

In the case of an applicant who has been engaged in business as a grain dealer for one year or more, the application shall set forth the aggregate dollar amount paid to producers for grain during the last completed fiscal year of the applicant. In the event the applicant has been engaged in business for less than one year or has not theretofore engaged in business as a grain dealer, the application shall set forth the estimated aggregate dollar amount to be paid by the applicant to producers, for grain purchased from them during the next succeeding fiscal year.

Amended by P.A. 80-1375, § 1, eff. Jan. 1, 1979; P.A. 81-186, § 1, eff. Jan. 1, 1980; P.A. 81-190, § 1, eff. Aug. 14, 1979.

303. Bond or certificate of deposit of licensee—Waiver of bond requirement

§ 3. Every person licensed as a grain dealer shall have filed with the Department a surety bond signed by the

dealer as principal and by a responsible company authorized to execute surety bonds within the State of Illinois. A grain dealer may file with the Department, in lieu of a surety bond, a certificate of deposit payable to the Director, as trustee. The principal amount of such certificate shall be the same as that required for a surety bond under this Act and the interest thereon shall be made payable to the purchaser thereof. Such bond shall be a principal amount (to the nearest $1,000) equal to 10% of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year or in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not theretofore engaged in such business, 10% of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than $25,000 nor more than $100,000, except as otherwise authorized by this Act. Any grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit payable to the Director, as trustee. The principal amount of such certificate shall be the same as that required for a surety bond under this Act and the interest thereon shall be made payable to the purchaser thereof.

The Department may, when they question a grain dealer's ability to pay producers for grain purchased, or when they determine that the grain dealer does not have a sufficient net worth to outstanding financial obligations ratio, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the Department or may require an additional certificate of deposit. Failure to post such additional bond or certificate of deposit constitutes grounds for suspension or revocation of a license issued under this Act.

Such bond or additional bond shall be made payable to the People of the State of Illinois, with the Director of the Department as trustee, and shall be conditioned on the grain dealer's faithful performance of his duties as a grain dealer and his compliance with this Act, and shall be for the use and benefit of any producer from whom the grain dealer may purchase grain and who is not paid by such grain dealer, and shall not be cancelled, except upon at least 60 days' notice in writing to the Department. In no event shall the total aggregate liability of a surety exceed the face amount of its bond.

Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee payment to producers for grain purchased by him may request the Department to be relieved of the obligation of filing a bond in excess of the minimum bond of $25,000. Such request shall be accompanied by a financial statement of the applicant made within 5 months of the date of such request certified by a licensed public accountant and such additional information concerning the applicant and his finances as the Department may require. If such financial statement discloses a net worth of an amount equal to at least 3 times amount of the bond required by this Act and the Department is otherwise satisfied as to the financial ability and resources of the applicant, the Department may waive that portion of the required bond in excess of $25,000. However, in the case of a grain dealer whose net worth is not equal to three times the amount of bond required, the Department may allow such grain dealer to waive in $1,000 increments a portion of the bond required in excess of $25,000. The percentage factor to be applied to the bond required in excess of $25,000 shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of $25,000. If the result

of this computation provides a percentage factor of 80 percent or greater, then that same percentage of the bond in excess of $25,000 may be waived. The grain dealer shall then provide to the Department a surety bond in the amount of $25,000 plus any additional bond required in excess thereof.

Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchases of grain from producers during any fiscal year do not exceed an aggregate dollar amount of $100,000 may satisfy the bonding requirements of this Act by filing with the Department a bond or certificate of deposit at the rate of $1,000 for each $10,000 or fraction thereof of the dollar amount to be purchased, with a minimum bond or certificate of deposit of $1,000, and a current financial statement.

Failure of a grain dealer to file a bond or certificate of deposit and to keep such bond or certificate of deposit in force or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this Act.

When the Director has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the Director shall determine through appropriate legal procedures the producers and the amount of defaulted payment and as trustee of the bond shall immediately after such determination call for the dealer's surety bond or bonds to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed producers be less than the principal amount of the bond or bonds then the surety shall be obligated to pay only the amount of the default.

A grain dealer whose license has been issued prior to the effective date of this amendatory Act of 1977 will not have to comply with the bonding requirement of this amendatory Act until the next renewal date of his license; except the Department during this interim period may require such a grain dealer to file the required bond or certificate of deposit when in its opinion the grain dealer's ability to pay for grain purchased is inadequate.
Amended by P.A. 80-1375, § 1, eff. Jan. 1, 1979.

304. License—Issuance—Duration—Renewal—Posting—Certificate of compliance

§ 4. If the Department is satisfied:

(a) that the applicant is of good business reputation,

(b) that the applicant has the qualifications and background essential for the conduct of a grain dealer's business, as may be determined by examination and re-examination by the Department. The Department may require applicants to participate in training programs developed to insure compliance with this and other provisions of this Act,

(c) that the applicant has adequate bonding under Section 3 of this Act,[1]

(d) that the applicant maintains a permanent business location, and such applicant's place of business will remain open from at least one-half hour prior to the daily opening to at least one-half hour after the daily closing of the Chicago Board of Trade, unless otherwise approved by the Director.

(e) that the applicant has sufficient financiai resources to guarantee payment to producers for grain purchased from them, then the Department shall issue a license to the applicant or shall renew the applicant's license.

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[1] Paragraph 303 of this chapter.

Licenses shall be issued or renewed annually for a period ending 90 days after the last day of the applicant's fiscal year.

The license or renewal thereof issued by the Department under this Section shall be posted in the principal office of the licensee in this State. A certificate shall be posted in each location listed on a licensee's application where he engages in the business of buying grain. In the case of a licensee operating a truck or tractor trailer unit the licensee is required to have a certificate that the license is in effect and that a bond or certificate of deposit has been filed carried in each truck or tractor trailer unit used in connection with the purchase of grain from producers. Upon request of a licensee and payment of the fee therefor, the Department shall issue to the licensee a ecrtificate that a license has been issued or renewed and a bond filed as required by this Act.

Amended by P.A. 80-1375, § 1, eff. Jan. 1, 1979.

305. Fees

§ 5. The application for a license to operate as a grain dealer as defined in this Act, or a renewal thereof, shall be accompanied by a filing fee of $50. The fee for a certificate that a license has been issued and a bond or certificate of deposit filed is $10. All fees collected by the Department under this Section shall be paid into the State Treasury.

Amended by P.A. 79-736, § 1, eff. Oct. 1, 1975.

306. Annual inspection—Fee—Inspection of premises, books, etc.—Reports—Suspension of license—Proceedings—Review under Administrative Review Act

§ 6. The Department shall examine or inspect each licensed grain dealer at least annually. The Department shall charge and cause to be collected for at least one examination or inspection per year a just and reasonable fee as set forth by the rules and regulations.

The Department may inspect the premises used by any grain dealer in the conduct of his business at any time and the books, accounts, records and papers of every such grain dealer shall at all times during business hours be subject to inspection by the Department. Each grain dealer may also be required to make such reports of his activities, obligations, and transactions as deemed necessary by the Department to protect the producer as set forth in the rules and regulations.

Any grain dealer determined to be in a speculative position in excess of normal grain merchandising practices shall be deemed to be in violation of the Act.

If a grain dealer violates any of the provisions of this Act, his license and certificate of license may be removed from his premises by any Department employee charged with the enforcement of this Act and returned to the Department. Such removal shall constitute a suspension of the license.

If the Department revokes or suspends a license, notice thereof shall be posted immediately by an employee of the Department in a conspicuous place on the premises and published by the Department in at least one newspaper of general circulation in the area served by the grain dealer whose license is being suspended or revoked as soon as practicable but in no case later than 7 days after such suspension or revocation. Within one week after suspension or revocation, the Department shall return to the premises of such grain dealer to insure that the facility has been closed.

The Department may, upon its own motion and shall upon the verified complaint in writing of any person setting forth facts which if proved would constitute grounds for refusal, suspension or revocation of a license under this Act, investigate the actions of any applicant or any person or persons applying for, holding or claiming to hold a license.

The Department within 10 days after removing and suspending a license as provided in this section or before refusing to issue or renew or before otherwise suspending or revoking a license shall set a date for a hearing thereon and at least 10 days prior to the date set for the hearing, shall notify in writing the applicant for or holder of a licenes, hereinafter called the respondent, that a hearing will be held on the date designated to determine whether the respondent is privileged to hold such license and shall afford the respondent opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by personal service on the respondent or by mailing the same by registered or certified mail to the place of business last theretofore specified by the respondent in the last application or notification to the Department.

At the time and place fixed in the notice the Department shall proceed to hear the matter and any charges made and both the respondent and any complainant shall be accorded ample opportunity to present in person or by counsel such statements, testimony, evidence and argument as may be pertinent to the matter or charges or to any defense thereto. The Department may continue such hearing from time to time.

The Department, over the signature of the Director, is authorized to issue subpoenas and to bring before the Department any person or persons in this State and to

take testimony either orally or by deposition or by exhibit with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings and civil cases in the circuit courts of this State. The Director is authorized to issue subpoenas duces tecum on any or all records relating to a grain dealer's business. The Director or his designee may administer oaths to witnesses at any hearing which the Department is authorized by law to conduct.

The provisions of the "Administrative Review Act" approved May 8, 1945 as amended and the rules adopted pursuant thereto[1] shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decision" is defined as in Section 1 of said "Administrative Review Act".[2]

Amended by P.A. 80-1375, § 1, eff. Jan. 1, 1979; P.A. 81-186, § 1, eff. Jan. 1, 1980.

307. Failure or refusal to make payment to producer—Notice—Recovery under bond

§ 6.1. If a grain dealer should fail or refuse to make payment to a producer for grain purchased when such payment is requested by the producer and the request is made within 160 days of the date of sale or the date of delivery of such grain to the dealer, whichever is later, but in case of deferred pricing, delayed pricing, priced-later, or similar contractual arrangements, no more than 270 days after the date of delivery, the producer may notify the Director in writing, by certified mail when possible, of such failure or refusal within the 160 day period or 10 days thereafter. The Director upon receiving such notice

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[1] Chapter 110, ¶ 264 et seq.

[2] Chapter 110, ¶ 264.

shall take whatever action is necessary. The producer furnishing such written notice within the prescribed length of time is entitled to the benefits of the grain dealer's bond. However, if a producer fails to furnish written notice to the Director within the prescribed time, when such producer is not entitled to any benefits under the grain dealer's bond. Grain dealer liability under price contracts, open price contracts, deferred price contracts, or similar agreements shall accrue under the bond in effect at the date of default as determined by the Director.

Amended by P.A. 80-776, § 1, eff. Oct. 1, 1977.

308. Rules and regulations

§ 7. The Department may make such rules and regulations as may be necessary to carry out the provisions of this Act.

309. Failure to secure license—Invalid license—Violations—Injunctions

§ 8. Any person who engages in business as a grain dealer without securing a license or who does not have a valid license or in violation of this Act or the rules and regulations promulgated thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the Director or his duly authorized agent in performance of his duty in connection with this Act or its rules and regulations or any grain dealer who refuses to permit inspection of his premises, books, accounts or records as provided in this Act shall be guilty of a Class B misdemeanor for the first violation, and be guilty of a Class A misdemeanor for each subsequent violation. In case of a continuing violation or violations, each day that each violation occurs constitutes a separate and distinct offense.

Any grain dealer who withholds records, keeps or files false records or who inaccurately alters his records or

who presents to the Department any materially false records is guilty of a felony and upon conviction shall be punished for such offense by a fine of not less than $5,000 nor more than $50,000 or by imprisonment in any State Penitentiary for not less than two years nor more than five years or both.

It shall be the duty of each State's Attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in the circuit court without delay. Before the Director reports a violation for prosecution he may give the grain dealer an opportunity to present his views at a hearing.

The Director may apply for and the circuit court may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this Act or any rules and regulations promulgated under the Act notwithstanding the existence of other remedies. Any such injunction to be issued without notice and without bond.

The Director may, in conjunction with the authorities granted him in Section 40.23 of the Civil Administrative Code,[1] prohibit a grain dealer from disposing of any grain owned, in whole or in part, or held or in his possession whether owned or in whole or in part, or may prohibit anyone from removing any grain in which the grain dealer or producers from which he has purchased grain have an interest; and shall have authority for the disposition of such grain to carry out the intents of this Act. That failing, the Director may apply to the circuit court for a temporary or permanent injunction to be issued without notice or without bond to carry out the intent of this Act.

Amended by P.A. 80-1375, § 1, eff. Jan. 1, 1979.

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[1] Chapter 127, ¶ 40.23.

310. Price later contracts—Printing

§ 9. A price later contract shall be printed by an agency, authorized to print such contracts by the Department after the agency has provided a surety bond approved by the Department in the sum of $5,000 to guarantee the faithful compliance with the following provisions and requirements:

(A) That all price later contracts be printed as herein prescribed and should be printed for only those having a valid Illinois Grain Dealer's License.

(B) That all price later contracts shall be numbered consecutively and a complete record of these contracts shall be retained showing for whom printed, and the consecutive numbers printed thereon.

(C) That a duplicate copy of all invoices rendered for printing price later contracts which will show the consecutive numbers printed thereon, also number printed, shall be promptly forwarded to the office of the Department of Agriculture, Springfield, Illinois.

Added by P.A. 80-1375, § 1, Jan. 1, 1979.

311. Intention to purchase by price later contracts—Notice

§ 10. Before engaging in the purchase of any commodity by price later, a dealer shall indicate his intention to do so to the Department on forms provided by the Department. Upon submitting a notice of intention to purchase by price later, the dealer shall set forth in the method of price protection utilized whether by retaining control of the grain subject to price later, by an option on a duly licensed commodity exchange or otherwise. All dealers shall

use price later contracts printed in accordance with Section 9 of this Act.[1]

A licensed grain dealer purchasing any commodity by price later contracts shall at all times maintain grain, rights in grain, proceeds from the sale of grain, or a combination thereof totaling 90 percent of the dealer's obligation for commodities purchased by price later. Such amount shall be evidenced or represented by one or more of the following:

(A) Grain. Sufficient grain actually held by the dealer in his storage facilities.

(B) Rights in grain. Sufficient rights in grain evidenced or represented by one or more of the following:

(1) A warehouse receipt issued by a state or federally licensed agricultural commodities warehouse or by a warehouse receipt or ticket which would be accepted as evidence of inventory under the Illinois Public Grain Warehouse and Warehouse Receipts Act.[2]

(2) Evidence of grain forwarded to another warehouse as prescribed under the Illinois Public Grain Warehouse and Warehouse Receipts Act.

(C) Proceeds of grain. Sufficient proceeds from and of the grain evidenced or represented by one or more of the following:

(1) Cash on hand or cash held on account in federally or state licensed financial institutions.

(2) Short term investments held in time accounts with federally or state licensed financial institutions.

(3) Balances on grain margin accounts.

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[1] Paragraph 310 of this chapter.

[2] Chapter 114, ¶ 214.1 et seq.

(4) Price later contracts for grain shipped to a processor or terminal as purchaser, less any payment or advance that has been received; provided that the price term of such contracts remains open.

(5) Such other evidence of proceeds from or of grain as may be acceptable to the Director, including an irrevocable letter of credit.

A licensed grain dealer shall practice an effective method of price protection, as approved by the Director, sufficient to protect himself against market fluctuations, as would be the case in his procurement of options on a duly licensed commodity exchange.

For the purpose of computing the dollar value of inventories and price later obligations, the value of grain shall be figured at the then current market.

Title to all commodities sold by price later shall be in the purchasing dealer on and after the delivery to him of such commodity.

No storage charges shall be made with respect to any commodity purchased by price later. A service charge may be made.

All scale tickets or other approved documents with respect to grain purchased by a dealer by price later shall contain the following: "Sold Grain; Price Later".

The duration of a price later contract shall not exceed 12 months from the date delivery of grain covered by the contract is completed.

A dealer shall keep sufficiently detailed books and records of price later obligations and evidence of grain, rights in grain and the proceeds from or of grain so as to clearly show compliance with these requirements.

Added by P.A. 80-1375, § 1, eff. Jan. 1, 1979.

APPENDIX B

IN THE
APPELLATE COURT OF ILLINOIS
SECOND CIRCUIT

No. 79-347

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE and his agents,

Plaintiff-Appellee,

v.

CARROLL FEED SERVICE, INC., a corporation,

Defendant-Appellant.

Appeal from the Circuit Court of the 15th Judicial Circuit, Carroll County, Illinois.

PRESIDING JUSTICE SEIDENFELD delivered the opinion of the court:

The defendant, Carroll Feed Service, Inc., (Carroll) appeals from a judgment entered on the pleadings which permanently enjoined it from operating a grain dealership without a license. Its principal contention is that the bonding provisions of the Illinois Act to License and Regulate Grain Dealers (Ill.Rev.Stat. 1977, ch. 111, par. 303) under which its license was suspended for failure to post a surety bond or its equivalent based on 10% of its gross sales is unconstitutional on equal protection grounds.

The Director of the Illinois Department of Agriculture (The Director) has contended preliminarily that Carroll has failed to preserve its constitutional claim because of its failure to seek review of the license revocation under

the Administrative Review Act. We cannot agree. Since Carroll claims that the statute is invalid in its terms and not merely in its application to it, it was not required to exhaust administrative procedure. (*Walker* v. *State Board of Elections,* 65 Ill.2d 543, 552 (1976).) The Director has argued that Carroll was claiming that the *application* of the bonding and inspection requirements of the Act to it were arbitrary and discriminatory, thus, that the *Walker* exception does not excuse Carroll. This view is not supported by the record.

However, we conclude that the bonding provision of the Act is constitutional. The Act requires that a licensed grain dealer file a surety bond or a certificate of deposit as provided in the Act and states that the failure to do so is grounds for suspension of the license. The Act further provides as pertinent:

> "Such bond shall be a principal amount (to the nearest $1,000) equal to 10% of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year or in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not theretofore engaged in such business, 10% of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than $25,000 nor more than $100,000, * * *" Ill.Rev.Stat. 1977, ch. 111, par. 303.

Carroll argues that the upper limit of $100,000 on the required bond amount denies equal protection by favoring large dealers over small ones. It points out that a dealer doing $1,000,000 in sales has to post a 10% bond ($100,000) while a dealer doing $10,000,000 in sales still only has to post the $100,000 bond which would amount to only 1% of its sales. It argues that therefore any dealer doing

over $1,000,000 in sales is allowed to post a smaller percentage of his sales as bond and therefore enjoys an unequal advantage over smaller competitors.

Classifications which bear a rational relationship to a legitimate legisaltive purpose will be upheld. (*S. Bloom, Inc.* v. *Mahin,* 61 Ill.2d 70, 77 (1975).) A classification is not arbitrary if any state of facts can reasonably be conceived that would sustain it. (*Davis* v. *Commonwealth Edison Co.,* 61 Ill.2d 494, 497 (1975).) Possible legislative motives which support a reasonable differentiation in classification may be properly considered. (*McRoberts* v. *Adams,* 60 Ill.2d 458, 463 (1975).) And it is not necessary that the legislature extend regulation to all cases it might possibly reach. "It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest." (*McRoberts* v. *Adams* at 463-464). The legislature is not required to make "the unrealistic choice of establishing total and exhaustive regulation or none at all. * * * It may confine its restrictions to those classes where the need is deemed to be the clearest." *Chicago Allis* v. *Metropolitan San. Dist.,* 52 Ill. 2d 320, 331 (1972).

Thus, in *Allis* an ordinance controlling waste discharge applicable only to industrial concerns which discharge more than 3,650,000 gallons of waste per year was upheld over an equal protection attack. The legislature could reasonably have decided similarly in dealing with grain dealers that bankruptcies among small dealers were much more likely than among large ones. It could have reasoned that dealers having over $1,000,000 in annual sales exhibited sufficient financial stability so as not to require an additional bond in an amount over $100,000. The legislature may have decided that at the very least it was rational to

first protect against bankruptcies by small dealers, and have considered the fact that a dealer who does a large volume business had indicated some degree of sound management and customer confidence which may or may not have been the case with a smaller dealer. Referencing the amount of the bond to sales volume appears to be a rational approach. Similarly a cutoff of the upper amount of the statutory bond also appears reasonable since the legislature is free to determine that larger businesses do not need a corresponding percentage of bond protection. In any event the defendant has not met its burden of showing that the classification is clearly and palpably unreasonable.

Carroll has relied principally upon *Cotting* v. *Godard,* 183 U.S. 79, 46 L.Ed. 92, 22 S.Ct. 30 (1901). In *Cotting* a Kansas statute which limited prices to be charged by stockyards doing business over a certain amount did not apply to charges to be made by other similar corporations doing a smaller amount of business. It there appeared that the statute was effectively applicable to only one company in the state and it was therefore struck down on equal protection grounds since the Supreme Court could not find that the classification bore any rational relationship to any legitimate state purpose. Here, the parties agree that the legitimate state purpose of this statute is to safeguard producers from bankruptcy of grain dealers.

Carroll has also contended that a further section of the Grain Dealers Act is unconstitutional. Section 6 of the Act permits the Director to examine or inspect each licensed grain dealer at least annually, allows the Director to inspect the premises, books and records of any grain dealer at any time, and authorizes the Director to issue subpoenas for any records relating to a grain dealer's business. (Ill.Rev.Stat. 1977, ch. 111, par. 306.) Carroll

argues that it properly refused to comply with the subpoena *duces tecum* issued by the Department for the reason that the authorization in the Act is unconstitutional in permitting what it contends is in effect a warrantless search without the allowance to it of proper constitutional safeguards. See, *Marshall* v. *Barlow's Inc.*, 436 U.S. 307, 56 L.Ed.2d 305, 98 S.Ct. 1816, 1820 (1978) (but see the exception for a licensed and regulated industry noted at page 1821).

We do not reach the merits of this claim inasmuch as the record shows that the grain dealer's license was revoked because Carroll failed to file the requisite bond and by its own admission was operating without a license at the time of the injunction proceedings. The failure to file the bond, which we have concluded was properly ordered under the statute, is an independent ground for the revocation of Carroll's license without regard to its refusal to obey the Department's subpoena. We therefore need not address Carroll's contention that it properly refused compliance with Section 6 of the Grain Dealers Act.

We thus conclude that the court did not err in granting plaintiff's motion for judgment on the pleadings. There were no disputed facts; only the question of the constitutionality of the Act and plaintiff was therefore entitled to the relief sought as a matter of law. Section 8 of the Illinois Grain Dealers Act specifically provides for the injunction which was granted by the trial court. Contrary to Carroll's contention there is no requirement that in that case there be also a showing of irreparable injury or the absence of an adequate remedy at law. See, *People ex rel. Carpentier* v. *Goers*, 20 Ill.2d 272, 277 (1960).

The judgment is affirmed.

Affirmed.

UNVERZAGT and VanDEUSEN, J.J. concur.

APPENDIX C

ILLINOIS SUPREME COURT

CLELL L. WOODS, Clerk

Supreme Court Building

Springfield, Ill. 62706

(217) 782-2035

September 29, 1980

Mr. George H. Klumpner
Asst. Attorney General
160 N. LaSalle St., S#800
Chicago, IL 60601

No. 53496—The Director of the Illinois Department of Agriculture, etc., respondent, vs. Carroll Feed Service, Inc., a corp., petitioner. Leave to appeal, Appellate Court, Second District.

The Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ *Clell L. Woods*

Clerk of the Supreme Court

APPENDIX D

IN THE CIRCUIT COURT
OF THE
FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY, ILLINOIS

No. 79-CH-4

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE and his agents,

Plaintiffs,

CARROLL FEED SERVICE, INC., a corporation,

Defendant.

ORDER

(Filed April 30, 1979)

This matter coming before the Court upon the Department of Agriculture's Motion for a Permanent Injunction based upon Count I of the Verified Complaint for Injunction filed previously herein, the Court having jurisdiction of the subject matter and being fully advised in the premises herein, hereby finds and declares:

1. That Section 8 of the Illinois Grain Dealers Act specifically entitles the Director of the Illinois Department of Agriculture to be issued a permanent injunction based upon a verified complaint that a grain dealer is doing business within the State of Illinois without the benefit of license being issued by the Director of the Illinois Department of Agriculture. 1977 Ill. Rev. Stat., ch. 5, par. 301 et seq.

2. The Court finds that the Illinois Grain Dealers Act is constitutional.

3. The Court grants the Plaintiff's Judgment upon the Pleadings.

4. The Court denies the Defendant's Offer of Proof in relationship to the necessity of a factual hearing being required pursuant to Section 8 of the Grain Dealers Act.

WHEREFORE it is hereby ordered, adjudged and decreed by this Court that the Defendant, Carroll Feed Service, Inc., a corporation, be permanently enjoined from engaging in business and operating as a grain dealer doing business in Mt. Carroll, Illinois. This injunction shall issue and be effective immediately and the Defendant is hereby ordered to refrain from disposing of any grain in his custody or from accepting any future deliveries of grain from any producers until further ORDER of this Court

It is further Ordered that the Director of the Illinois Department of Agriculture be named as trustee to dispose of such grain upon the premises of the Carroll Feed Service, Inc.

Memorandum Opinion is to follow.

ENTER: April 24, 1979

Richard E. De Moss

Circuit Judge

APPENDIX E

TO THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

No. 79-347

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE AND HIS AGENTS,
Plaintiff-Appellee,

vs.

CARROLL FEED SERVICE, INC., A CORPORATION,
Defendant-Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed October 30, 1980)

1. Notice is hereby given that CARROLL FEED SERVICE, INC., a corporation, Defendant-Appellant, hereby appeals to the United States Supreme Court from the judgment entered herein on April 15, 1980, by the Appellate Court of Illinois, Second District, petition for leave to appeal to the Illinois Supreme Court denied September 29, 1980.

2. This appeal is taken pursuant to 28 U.S.C. Sec. 1257(1).

Loren S. Golden
Loren S. Golden

SCHWARZ & GOLDEN, LTD.
Attorneys for Defendant-Appellant
303 West Main Street
West Dundee, Ill. 60118
Telephone: 312/428-7725

IN THE
SUPREME COURT OF ILLINOIS

No. 53496

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE AND HIS AGENTS,

Plaintiff-Appellee,

vs.

CARROLL FEED SERVICE, INC., A CORPORATION,

Defendant-Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed November 6, 1980)

1. Notice is hereby given that CARROLL FEED SERVICE, INC., a corporation, Defendant-Appellant, hereby appeals to the United States Supreme Court from the judgment entered herein on April 15, 1980, by the Appellate Court of Illinois, Second District, petition for leave to appeal to the Illinois Supreme Court denied September 29, 1980.

2. This appeal is taken pursuant to 28 U.S.C. Sec. 1257(1).

.....

Loren S. Golden

SCHWARZ & GOLDEN, LTD.
Attorneys for Defendant-Appellant
303 West Main Street
West Dundee, Ill. 60118
Telephone: 312/428-7725

APPENDIX F

IN THE CIRCUIT COURT
OF THE
FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY, ILLINOIS

No. 79-CH-4

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE and his agents,

Plaintiff,

v.

CARROLL FEED SERVICE, INC., a corporation,

Defendant.

COMPLAINT FOR INJUNCTION

(Filed January 23, 1979)

Now comes plaintiff, THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE and his agents, by WILLIAM J. SCOTT, Attorney General of the State of Illinois and alleges that:

COUNT I

1. The plaintiff is the Director of the Illinois Department of Agriculture, said position created pursuant to Illinois statute, specifically, Ill. Rev. Stat., 1977, ch. 127, par. 4.

2. The defendant Carroll Feed Services, Inc., is an Illinois corporation operating as a grain dealer doing business in Mt. Carroll, Illinois.

3. In order to operate as a grain dealer in the State of Illinois a person (which includes a corporation) must secure a license from the Illinois Department of Agriculture which license must remain validated during the entire period of time a grain dealer does business in the State of Illinois. Ill. Rev. Stat., 1977, ch. 111, par. 301, *et seq.* Said statutory section is known as the "Illinois Grain Dealers Act" (hereinafter referred to as the "Act").

4. Pursuant to Section 3 of the Act, grain dealers are required to file either a surety bond or a certificate of deposit payable to the plaintiff as trustee in an amount equal to 10% of the aggregate dollar amount paid by the dealer to producers for grain purchased from them during the dealer's last completed fiscal year.

5. Pursuant to Section 6 of the Act, the Department of Agriculture is entitled to inspect the books, accounts, records, and papers of any grain dealer during normal business hours.

6. As of October 15, 1978 to the present, the defendant has refused to file either a grain dealer's bond or a certificate of deposit naming plaintiff as trustee, all in violation of Section 3 of the Act.

7. As of October 24, 1978 to the present, the defendant has refused to allow the plaintiff an opportunity to inspect the books, accounts, records, and papers of his business operation, all in violation of Section 6 of the Act.

8. Pursuant to Section 3 of the Act on October 15, 1978, the plaintiff suspended the defendant's license to operate as a grain dealer and ordered the defendant to cease operations as a grain dealer in Illinois. Said order was served upon defendant by certified mail, post card receipt requested. See Exhibit "1".

9. Notwithstanding said order referred to in paragraph 8, the defendant continued and continues at the present to conduct business as usual as a grain dealer in Illinois.

10. Pursuant to Section 6 of the Act the Plaintiff issued notice to show cause upon the defendant as to why its license should not be permamently revoked and set the matter down for formal administrative hearing in its offices located in Springfield, Illinois, on October 31, 1978. See Exhibit "1".

11. The defendant indicated to the plaintiff that it was not going to attend the administrative hearing, referred to in paragraph 10, even though it had been served with proper notice. See Exhibit "2".

12. On October 26, 1978 a *subpoena duces tecum* was validly served upon the defendant requiring it to produce its business records for inspection by the plaintiff. The defendant adamantly refused to comply with the terms of said subpoena. See Exhibit "3".

13. On October 31, 1978 an admanistrative hearing was conducted by the plaintiff concerning revocation of the defendant's license to operate as a public grain retailer. A motion was made by the plaintiff's representative that the defendant's license be permanently revoked. Said motion was sustained by the hearing officer. See Exhibit "4".

14. On November 14, 1978 the defendant addressed a letter to the plaintiff indicating, *inter alia,* that it had no intention of renewing its grain dealer's license but that it was still going to continue in the grain business as usual. See Exhibit "2".

15. On November 30, 1978 the plaintiff issued a final administrative decision revoking the defendant's grain dealer's license. Said decision was served upon defen-

dant on December 4, 1978. The defendant has not sought review of said decision pursuant to the terms of the Illinois Administrative Review Act. See Exhibit "5".

16. Section 8 of the Act states that any person (including a corporation) who engages in business as a grain dealer without securing a license or who does not have a valid license shall be enjoined from engaging in the grain business. Said injunction is to be issued without notice and without bond.

17. The plaintiff will be irreparably injured if the defendant is not enjoined from engaging in the grain dealership business. Such injury includes but is not limited to:

a. Section 8 of the Act specifically entitles the Director to a temporary or permanent injunction without notice or bond, and thus injury *per se* is suffered by the State if defendant is allowed to conduct a grain dealership without a license;

b. The producers of grain will be irreparably injured as the defendant has not posted any bond to protect them in case of default or bankruptcy on the part of the defendant;

c. If the defendant is able to flout the requirements of the Illinois Grain Dealers Act and not be required to post bond or allow its records to be open to inspection by public officials, other grain dealers may be encouraged to engage in such unlawful conduct.

WHEREFORE, the plaintiffs prays:

1. That this Court find that the defendant is in violation of the Illinois Grain Dealers Act and that such violation is a continuing one;

2. That this Court enter a preliminary injunction restraining the defendant from continuing to operate a grain dealership business without a State license, said injunction to issue without bond and without notice;

3. That this Court set down this matter for a hearing to permanently enjoin the defendant from continuing to operate a grain dealership in violation of the Illinois Grain Dealers Act;

4. That this Court enter such other relief that may be just and proper.

APPENDIX G

IN THE CIRCUIT COURT
OF THE
FIFTEENTH JUDICIAL CIRCUIT
CARROLL COUNTY, ILLINOIS

No. 79-CH-4

THE DIRECTOR OF THE ILLINOIS DEPARTMENT OF AGRICULTURE and his agents,

Plaintiff,

v.

CARROLL FEED SERVICE. INC., a corporation,

Defendant.

MOTION TO DISMISS IN LIEU OF ANSWER

(Filed February 8, 1979)

NOW COMES CARROLL FEED SERVICE, INC., a corporation and defendant herein by its attorneys herein, SCHWARZ AND GOLDEN, LTD., and moves this Honorable Court as follows:

COUNT I

1. That Count I of Plaintiff's Complaint for Injunction states that Defendant is in violation of the Illinois Grain Dealers' Act in that:

a. Defendant has not secured a bond pursuant to Section 3 of the Act; and

b. Defendant has not allowed inspection of his records;

c. Defendant did not comply with the Administrative *Subpoena Duces Tecum.*

2. The Count I of said Complaint for Injunction should be dismissed in that:

a. Section 3 of the Act (Ill. Rev. Stat. 1977, ch. 111, par. 303) is unconstitutional in that said bonding provision is unreasonable, discriminatory and arbitrary and therefore deprives the Defendant of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States and Article One, Section Two of the Constitution of the State of Illinois.

b. Section 6 of the Act (Ill. Rev. Stat., 1977, ch. 111, par. 306) is unconstitutional in that said inspection provision fails to provide any notice requirement prior to inspection and therefore deprives the Defendant of its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States and Article One, Section Two of the Constitution of the State of Illinois.

c. The *subpoena duces tecum* referred to in the Complaint for Injunction is invalid in that said *subpoena duces tecum* is unlawfully worded, to-wit: it is not a subpoena but in essence a search warrant and as such cannot be issued without probable cause and court sanction; therefore, Defendant cannot be said to refuse to comply with something that does not legally exist.

d. The Complaint fails to adequately allege the irreparable injury requisite for the issuance of an injunction in that said allegations refer to events which might occur in the future; an injunction will not lie to guard against future actions not yet in existence.

APPENDIX H

DEPARTMENT OF AGRICULTURE
STATE OF ILLINOIS
SPRINGFIELD, ILLINOIS

IN REGARD TO THE MATTER OF
CARROLL FEED SERVICE, INC.,
MT. CARROLL, ILLINOIS

SUBPOENA DUCES TECUM

TO: DARWIN GOSS
Mt. Carroll, Illinois

YOU ARE HEREBY COMMANDED, pursuant to the authority vested in the Department of Agriculture of the State of Illinois by Sec. 6 of the Grain Dealers Act, (Ill. Rev. Stats., 1975, Ch. 5, para. 306 and/or Ill. Rev. Stats., 1977, Ch. 111, para. 306) to turnover and deliver forthwith to my designated agent, Phil Dimpfl, any and all records in your possession relating to a grain dealer's business and specifically relating to the business of CARROLL FEED SERVICE, INC., said records to include, but not be necessarily limited to, all of the following:

scale tickets, both issued & unissued;
settlement sheets, both issued & unissued;
checks, both cancelled and unissued;
warehouse receipts, both cancelled & unissued;
grain bank ledger;
sales ledger;
purchase ledger;
purchase and sales contracts for grain; and,
price-later contracts for grain.

Executed this 25th day of October, 1978 by the authority vested in me at my office in Springfield, Illinois

John R. Block
John R. Block, Director of the Illinois Department of Agriculture